

STATE OF MICHIGAN  
COURT OF APPEALS

---

CHRISTIAN R. LUZ,

Plaintiff-Appellee,

v

HNTB CORPORATION,

Defendant-Appellant.

---

UNPUBLISHED

December 19, 2006

No. 263916

Ingham Circuit Court

LC No. 05-000402-CK

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying its motion for summary disposition, pursuant to MCR 2.116(C)(4). We reverse and remand.

Plaintiff had an employment contract with defendant and brought a claim for breach of that contract in Michigan's Ingham County Circuit Court. Notably, the employment contract contained a forum-selection provision, which provided, in relevant part:

**Section 11. Governing Law.** The parties recognize that the Corporation was formed under the laws of the State of Delaware but hereby specify that this Agreement shall be governed under the laws of the State of Missouri excluding the conflicts of laws provisions thereof. Any dispute with respect to this Agreement or employment shall be brought only in the Circuit Court of Jackson County, Missouri, and the parties hereto hereby irrevocably consent to personal jurisdiction in Jackson County, Missouri, and acknowledge the convenience and propriety of the venue.

Defendant's motion for summary disposition was based on the existence of the forum-selection provision.

On appeal, defendant asserts the trial court erred in failing to grant summary disposition because, based on the contract language, Missouri is the proper forum for resolution of this dispute. Dismissal of a cause of action based on a forum-selection clause necessitates a review and interpretation of the contractual language. The legal impact of a contractual clause comprises a question of law that this Court reviews de novo. *Quality Products & Concepts Co v Nagel Precision, Inc.*, 469 Mich 362, 369; 666 NW2d 251 (2003).

MCL 600.745 provides for the enforcement of forum-selection clauses, subject to specific exceptions. MCL 600.745(3). This Court recently addressed the enforceability of forum-selection and choice-of-law clauses in *Turcheck v Amerifund Financial, Inc.*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (Docket No. 269248, decided October 3, 2006), wherein it was determined:

[i]t is undisputed that Michigan's public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions. *Offerdahl v Silverstein*, 224 Mich App 417, 419; 569 NW2d 834 (1997). Thus, assuming that certain exceptions do not apply, Michigan courts will enforce an express forum-selection clause as written. MCL 600.745(3). Similarly, the Michigan courts will enforce contractual choice-of-law provisions assuming that certain conditions are met. *Chrysler Corp v Skyline Industrial Services, Inc.*, 448 Mich 113, 126-127; 528 NW2d 698 (1995); *Martino v Cottman Transmission Systems, Inc.*, 218 Mich App 54, 60-61; 554 NW2d 17 (1996). [*Turcheck, supra*, slip op at p 3.]

In Michigan, a party seeking to avoid enforcement of a forum-selection clause bears a "heavy burden." *Id.* at p 5.

Forum-selection clauses are similarly enforceable in Missouri. *High Life Sales Co v Brown-Forman Corp.*, 823 SW2d 493, 496-497 (Mo, 1992). Missouri courts will decline to enforce these clauses when doing so "would be either unfair or unreasonable." *Id.* at 497. The party seeking to avoid enforcement of the clause has a "heavy burden" to sustain. *Missouri ex rel JC Penny Corp v Schroeder*, 108 SW3d 112, 113-114 (Mo Ct App, 2003); see also *Whelan Security Co, Inc v Allen*, 26 SW3d 592, 595 (Mo Ct App, 2000). In assessing whether a forum-selection clause is reasonable, Missouri courts consider whether the clause "results in undue hardship, such as a necessity to travel or transport witnesses such a distance that expenses would render access to the courts impractical." *Burke v Goodman*, 114 SW3d 276, 281 (Mo Ct App, 2003). As such, the subject forum-selection clause is "equally enforceable" under both Michigan and Missouri law. *Turcheck, supra*, slip op at p 5.

The only grounds cited by plaintiff, in the instant dispute, for excepting enforcement of the forum-selection clause are: (1) that Missouri "would be a substantially less convenient place for the trial of the action than" Michigan, MCL 600.745(3)(c); or (2) that "[i]t would for some other reason be unfair or unreasonable to enforce the agreement," MCL 600.745(3)(e).

Plaintiff initially asserts that enforcement of the forum-selection provision would be unfair or unreasonable under MCL 600.745(3)(e). MCL 600.745(3)(e) comprises a catch-all provision, which precludes enforcement of a forum-selection or jurisdiction provision if "[i]t would for some other reason be unfair or unreasonable to enforce the agreement." Plaintiff put forth this allegation without presenting any supporting argument or evidence. Such a bald allegation, without anything further, is insufficient to meet the "heavy burden" imposed on plaintiff to successfully avoid enforcement of the forum-selection provision. *Turcheck, supra*, slip op at pp 5, 6; see *Whelan Security Co, Inc, supra* at 595-596.

Plaintiff further contends that enforcement of the forum-selection provision would be inconvenient and, therefore, is precluded by MCL 600.745(3)(c). In support of his position, plaintiff proffered an affidavit in which he alleged:

All of the witnesses which are relevant to the Employment contract, to the discussions prior to termination and to the actual act of termination of my employment and the failure of HNTB to comply with the terms which require the payment of the money to me under the factual circumstances existing in this case reside in . . . [Michigan].

All of the relevant witnesses reside in places other than Missouri.

These statements comprise “mere conclusory allegations” that are “devoid of detail” regarding the specific witnesses who will testify or how their testimony will relate to plaintiff’s breach of contract claim. *Rose v Nat’l Auction Group, Inc*, 466 Mich 453, 470; 646 NW2d 455 (2002), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 371-372; 547 NW2d 314 (1996); see also *Whelan Security Co, supra* at 596. As such, they are insufficient to sustain the “heavy burden” of demonstrating that enforcement of the forum-selection clause would work a substantial inconvenience or hardship. *Turcheck, supra*, slip op at pp 5, 6; see *Whelan Security Co, supra* at 595-596.

In addition, plaintiff’s assertion that litigating this dispute in Missouri would be inconvenient “should have been apparent to plaintiff when . . . [he] agreed to the forum selection clause.” *Turcheck, supra*, slip op at p 6. As this Court has previously noted:

[w]here the inconvenience of litigating in another forum is apparent at the time of contracting, that inconvenience is part of the bargain negotiated by the parties. Allowing a party who is disadvantaged by a contractual choice of forum to escape the unfavorable forum-selection provision on the basis of concerns that were within the parties’ original contemplations would unduly interfere with the parties’ freedom to contract and should generally be avoided. [*Id.*]

Therefore, plaintiff is precluded from challenging the forum-selection clause based on the purported inconvenience of the negotiated location.

Defendant contends the trial court erred in denying its motion based on the ruling of the Michigan Supreme Court in *OMNE Financial, Inc v Shacks, Inc*, 460 Mich 305; 596 NW2d 591 (1999), that venue selection clauses are not binding on Michigan courts. Notably, *OMNE* dealt with venue selection provisions and not forum-selection, which is both the subject of this dispute and expressly authorized by statute. MCL 600.745. In this instance, identification of the proper forum is a threshold issue, which must be determined before addressing the propriety of a particular venue. The parties contractually agreed that Missouri law would govern their disputes. Because the jurisdictional provision is enforceable, *Turcheck, supra*, slip op at pp 5-6, Michigan is not the proper forum for the resolution of this dispute. Notably, in Missouri, venue selection provisions are enforceable incident to forum-selection clauses. *High Life Sales Co, supra* at 496-497; *Burke, supra* at 279. Hence, the propriety of a particular venue is a matter to be addressed by Missouri, in accordance with the contractual agreement of the parties.

We reverse and remand for entry of an order dismissing plaintiff's action without prejudice. We do not retain jurisdiction.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot